IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1065 OF 2005

IN

WRIT PETITION NO. 2345 OF 1984

Surendra Ohswardas & 3 Ors. .. Applicants

vs.

G. Manmohan Rao & ors. .. Respondents.

Mr. Abhinandan Vagyani for the Applicant.

Shri N..Mehta for the Respondent Nos.2(A) to 2(F)

CORAM : Smt.Ranjana P. Desai, J.

DATED : 28th April, 2005.

P.C. :

1. This civil application is filed by the petitioners in writ petition no.2345 of 1984 for restoration of the writ petition. The petitioners are the original tenants. The original landlord filed suit against the petitioners for recovery of suit premises inter alia on the ground of bonafide and personal requirement and acquisition of suitable alternate accommodation. The suit was filed in the year 1965. It was decreed in the year 1971 in favour of the landlord. The petitioners filed the appeal in the lower appellate court which was

dismissed on 10.4.1984. The petitioners then filed the present writ petition on 15.6.1984 and it was admitted on 18.6.1984. An interim stay order was passed. It appears that on 12.8.1990 the first respondent expired and on 23.7.1994 the second respondent expired. The petitioners filed civil application no.3054 of 1996 for bringing legal heirs of respondent 2 on record. The said application was allowed on 4.7.2000. The petitioners amended the writ petition. The petitioners then filed civil application petition 3055 of 1996 for bringing heirs of respondent 1 on record. On 12.7.2002 that application was allowed. Amendment to bring heirs of respondent 1 on record was to be carried out within two weeks. Unfortunately, the then counsel did not carry out the amendment. The petition was posted for final hearing on 3.7.2000.

2. On that day the petitioner’s then counsel was not present. This court noted that the order dated 12.7.2002 passed by this court on civil application 3055 of 1996 was not carried out by the petitioners. Hence the conditional order was passed that if the objections are not removed within one week, the petition shall stand dismissed without reference to the court. It appears that the

objections were not removed within one week and therefore automatically the petition stood dismissed. The petitioners came to know about the dismissal of the writ petition only when their neighbour informed them on 27.3.2005 that a court notice was affixed on their premises asking them to show cause why the decree should not be executed. The petitioners thereafter filed the instant civil application.

3. I have heard the learned counsel appearing for both the sides. It is true that the petitioner's earlier advocate Shri Gore has been totally negligent. Resultantly, this application is filed after long delay i.e. it is filed after 1023 days. The learned counsel for the respondent raised a serious objection to the restoration of this petition. He submitted that the petitioners have been extremely callous and they do not deserve any leniency. He submitted that the concurrent finding of fact is against the petitioners and if this petition which is of the year 1984 is restored, the respondents will have to undergo the agony of waiting for several years till their petition is heard. Undoubtedly, there is some substance in the grievance of the respondents. However, in my

opinion, because of the default of the lawyer the parties should not suffer. Only on that ground this petition needs to be restored. The petitioners, however, must be made to pay cost quantified at Rs.2000/- (Rupees Two Thousand Only) to the Kirtikar Law Library within a period of one month. Restoration of the writ petition is subject to the payment of cost.

4. In the circumstances, the civil application is allowed. Delay is condoned. Writ petition is restored to the file.

5. The petitioners shall remove the office objections, if any, within a period of two weeks from today.

6. The small causes court at Mumbai is directed to accept the rent from the petitioners.

7. Office is directed to add this writ petition to the final hearing board forthwith.

8. Parties to act on the authenticated copy of this order.

Judge.